

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 174

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

AN ACT

RELATING TO HEALTH CARE; ENACTING KENDRA'S LAW; PROVIDING FOR  
ASSISTED OUTPATIENT TREATMENT SERVICES TO TREAT MENTAL ILLNESS;  
PROVIDING FOR PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as  
"Kendra's Law".

Section 2. DEFINITIONS.--As used in Kendra's Law:

A. "assisted outpatient treatment" means outpatient  
services ordered by a court, including case management services  
or assertive community treatment team services, prescribed to  
treat a person's mental illness and to assist a person in  
living and functioning in the community or to attempt to  
prevent a relapse or deterioration that may reasonably be  
predicted to result in harm to the person or another, suicide

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1 or the need for hospitalization;

2 B. "assisted outpatient treatment program" means a  
3 program that arranges and coordinates the provision of assisted  
4 outpatient treatment, including monitoring treatment compliance  
5 by patients, evaluating and addressing the conditions or needs  
6 of assisted outpatients and ensuring compliance with court  
7 orders;

8 C. "department" means the department of health;

9 D. "incapacitated person" means any person who is  
10 impaired by reason of mental illness to the extent that the  
11 person lacks sufficient understanding or capacity to make or  
12 communicate responsible decisions concerning the proposed  
13 nature of treatment and its consequences or his person;

14 E. "mental illness" means a substantial disorder of  
15 thought, mood or behavior that impairs that person's judgment,  
16 but does not mean developmental disability;

17 F. "patient" means a person receiving assisted  
18 outpatient treatment pursuant to a court order;

19 G. "provider" means an individual or organization  
20 licensed, certified or otherwise authorized or permitted by law  
21 to provide diagnosis or mental health treatment in the ordinary  
22 course of business or practice of a profession; and

23 H. "subject" means a person who is alleged in a  
24 petition, filed pursuant to the provisions of Kendra's Law, to  
25 meet the criteria for assisted outpatient treatment.

1           Section 3. PROVIDERS--OUTPATIENT TREATMENT PROGRAM.--A  
2 provider may operate, direct and supervise an assisted  
3 outpatient treatment program pursuant to Kendra's Law upon  
4 approval by the department. Providers may coordinate efforts  
5 to provide joint assisted outpatient treatment programs.  
6 Nothing in Kendra's Law shall be construed to affect the  
7 ability of a provider to receive, admit or retain patients who  
8 otherwise meet the provisions of Kendra's Law regarding  
9 receipt, retention or admission.

10           Section 4. ASSISTED OUTPATIENT TREATMENT--CRITERIA.--

11           A. A person may be ordered to obtain assisted  
12 outpatient treatment if the court finds that the person:

13                   (1) is eighteen years of age or older;  
14                   (2) is suffering from a mental illness;  
15                   (3) is unlikely to survive safely in the  
16 community without supervision, based on a clinical  
17 determination;

18                   (4) whose lack of compliance with treatment  
19 for mental illness that, prior to the filing of the petition,  
20 has:

21                           (a) at least twice within the last  
22 forty-eight months, been a significant factor in necessitating  
23 hospitalization or necessitating receipt of services in a  
24 forensic or other mental health unit or a correctional  
25 facility;

1 (b) resulted in one or more acts of  
2 serious violent behavior toward self or others or threats of,  
3 or attempts at, serious physical harm to self or others within  
4 the last forty-eight months;

5 (c) resulted in the person being  
6 hospitalized or incarcerated for at least six months and the  
7 person is to be discharged or released within the next thirty  
8 days; or

9 (d) resulted in the person being  
10 hospitalized or incarcerated for a period of six months or more  
11 and the person was discharged or released within the past sixty  
12 days;

13 (5) is unlikely, as a result of mental  
14 illness, to voluntarily participate in the recommended  
15 treatment pursuant to the treatment plan;

16 (6) in view of the person's treatment history  
17 and current behavior, is in need of assisted outpatient  
18 treatment in order to prevent a relapse or deterioration that  
19 would be likely to result in serious harm to the person or  
20 another person; and

21 (7) will likely benefit from assisted  
22 outpatient treatment.

23 B. If the person has an advance directive or  
24 personal representative, agent, surrogate, guardian or  
25 individual designated by the person to make health care

1 decisions, the court shall take into account any advance  
2 directives or directions by the personal representative, agent,  
3 surrogate, guardian or individual designated by the person in  
4 determining the written treatment plan. Nothing in Kendra's  
5 Law shall preclude a person with a personal representative,  
6 agent, surrogate, guardian or individual designated by the  
7 person from being subject to an order authorizing assisted  
8 outpatient treatment.

9 C. A court may not order assisted outpatient  
10 treatment if it finds a need for involuntary commitment  
11 pursuant to the Mental Health and Developmental Disabilities  
12 Code.

13 Section 5. PETITION TO THE COURT.--

14 A. A petition for an order authorizing assisted  
15 outpatient treatment may be filed in the district court in the  
16 county in which the subject is present or reasonably believed  
17 to be present. A petition shall be filed only by the following  
18 persons:

- 19 (1) a person eighteen years of age or older  
20 who resides with the subject;
- 21 (2) the parent or spouse of the subject;
- 22 (3) the sibling or child of the subject,  
23 provided that the sibling or child is eighteen years of age or  
24 older;
- 25 (4) the director of a hospital where the

1 subject is hospitalized;

2 (5) the director of a public or charitable  
3 organization or agency or a home where the subject resides and  
4 that provides mental health services to the subject;

5 (6) a qualified psychiatrist who either  
6 supervises the treatment of or treats the subject for a mental  
7 illness or has supervised or treated the subject for mental  
8 illness within the past forty-eight months;

9 (7) a provider or social services official of  
10 the city or county where the subject is present or reasonably  
11 believed to be present; or

12 (8) a parole officer or probation officer  
13 assigned to supervise the subject.

14 B. The petition shall include:

15 (1) each criterion for assisted outpatient  
16 treatment as set forth in Section 4 of Kendra's Law;

17 (2) facts that support the petitioner's belief  
18 that the subject meets each criterion; provided that the  
19 hearing on the petition need not be limited to the stated  
20 facts; and

21 (3) whether the subject is present or is  
22 reasonably believed to be present within the county where the  
23 petition is filed.

24 C. The petition shall be accompanied by an  
25 affidavit of a physician, who shall not be the petitioner, and

1 shall state that:

2 (1) the physician has personally examined the  
3 subject no more than ten days prior to the filing of the  
4 petition, that the physician recommends assisted outpatient  
5 treatment for the subject and that the physician is willing and  
6 able to testify at the hearing on the petition; or

7 (2) no more than ten days prior to the filing  
8 of the petition, the physician or the physician's designee has  
9 made appropriate attempts to elicit the cooperation of the  
10 subject but has not been successful in persuading the subject  
11 to submit to an examination, that the physician has reason to  
12 believe, based on the most reliable information available to  
13 the physician, that the subject meets the criteria for assisted  
14 outpatient treatment and that the physician is willing and able  
15 to examine the subject and testify at the hearing on the  
16 petition.

17 Section 6. HEARING--EXAMINATION BY A PHYSICIAN.--

18 A. Upon receipt of the petition, the court shall  
19 fix a date for a hearing no later than seven days after the  
20 date of service or attempted service. A copy of the petition  
21 and notice of hearing shall be served in the same manner as a  
22 summons on the petitioner, the subject, the physician whose  
23 affirmation or affidavit accompanied the petition, the provider  
24 and any other person the court deems advisable.

25 B. The subject shall be represented by counsel at

1 all stages of the proceedings.

2 C. If the subject fails to appear at the hearing  
3 after notice, and significant attempts to elicit the attendance  
4 of the subject have failed, the court may conduct the hearing  
5 in the subject's absence. If the hearing is conducted without  
6 the subject present, the court shall set forth the factual  
7 basis for conducting the hearing without the presence of the  
8 subject.

9 D. The court shall not order assisted outpatient  
10 treatment for the subject unless a physician, who has  
11 personally examined the subject of the petition within ten days  
12 prior to the filing of the petition, testifies in person at the  
13 hearing. Testimony shall include:

14 (1) the facts that support the allegation that  
15 the subject meets each criterion for assisted outpatient  
16 treatment and that the treatment is the least restrictive  
17 alternative;

18 (2) the recommended assisted outpatient  
19 treatment and the rationale for the recommended assisted  
20 outpatient treatment; and

21 (3) if the recommended assisted outpatient  
22 treatment includes medication, the types or classes of  
23 medication that should be authorized, the beneficial and  
24 detrimental physical and mental effects of such medication and  
25 whether such medication should be self-administered or should

1 be administered by an authorized professional.

2 E. If the subject has refused to be examined by a  
3 physician and the court finds reasonable grounds to believe  
4 that the allegations of the petition are true, the court may  
5 direct a law enforcement officer to take the subject into  
6 custody and transport the subject to a provider for examination  
7 by a physician. The examination of the subject may be  
8 performed by the physician whose affidavit accompanied the  
9 petition. If the examination is performed by another  
10 physician, the examining physician shall be authorized to  
11 consult with the physician whose affidavit accompanied the  
12 petition. No subject taken into custody pursuant to this  
13 subsection shall be detained longer than necessary or longer  
14 than twenty-four hours.

15 Section 7. WRITTEN LICENSED PHYSICIAN TREATMENT PLAN.--

16 A. The court shall not order assisted outpatient  
17 treatment unless an examining physician:

- 18 (1) identified by a provider develops and  
19 provides to the court a proposed written treatment plan; and  
20 (2) testifies to explain the written proposed  
21 treatment plan.

22 B. In developing a treatment plan, the physician  
23 shall take into account, if existing, an advance directive and  
24 provide the following persons with an opportunity to actively  
25 participate in the development of the plan:

- 1 (1) the subject;  
2 (2) the treating physician; and  
3 (3) upon the request of the subject, an  
4 individual significant to the subject, including any relative,  
5 close friend or individual otherwise concerned with the welfare  
6 of the subject. If the petitioner is a provider, the plan  
7 shall be provided to the court no later than the date of the  
8 hearing on the petition.

9 C. The written treatment plan shall include case  
10 management services or an assertive community treatment team to  
11 provide care coordination and assisted outpatient treatment  
12 services recommended by the physician. If the written  
13 treatment plan includes medication, it shall state whether such  
14 medication should be self-administered or should be  
15 administered by an authorized professional and shall specify  
16 type and dosage range of medication most likely to provide  
17 maximum benefit for the subject. If the written treatment plan  
18 includes alcohol or substance abuse counseling and treatment,  
19 such plan may include a provision requiring relevant testing  
20 for either alcohol or illegal substances; provided that the  
21 physician's clinical basis for recommending such plan provides  
22 sufficient facts for the court to find that:

- 23 (1) the subject has a history of alcohol or  
24 substance abuse that is clinically related to the mental  
25 illness; and

1 (2) such testing is necessary to prevent a  
2 relapse or deterioration that would be likely to result in  
3 serious harm to the subject or others.

4 D. Testimony explaining the written treatment  
5 program shall include:

6 (1) the recommended assisted outpatient  
7 treatment, the rationale for the recommended assisted  
8 outpatient treatment and the facts that establish that such  
9 treatment is the least restrictive alternative; and

10 (2) if the recommended assisted outpatient  
11 treatment includes medication, the types or classes of  
12 medication that should be authorized, the beneficial and  
13 detrimental physical and mental effects of such medication and  
14 whether such medication should be self-administered or should  
15 be administered by an authorized professional.

16 Section 8. DISPOSITION.--

17 A. If after hearing all relevant evidence, the  
18 court finds the subject to be an incapacitated person, that  
19 grounds for assisted outpatient treatment have been established  
20 by clear and convincing evidence and that there is no  
21 appropriate and feasible less restrictive alternative, it shall  
22 be authorized to order the subject to receive assisted  
23 outpatient treatment for an initial period not to exceed six  
24 months. In its order, the court shall state the assisted  
25 outpatient treatment that the subject is to receive. A court

1 may order the subject to self-administer psychotropic drugs or  
2 accept the administration of such drugs by an authorized  
3 professional as part of an assisted outpatient treatment  
4 program. The order may specify the type and dosage range of  
5 such psychotropic drugs and shall be effective for the duration  
6 of the subject's assisted outpatient treatment. The court may  
7 not order treatment that has not been recommended by the  
8 examining physician and included in the written treatment plan  
9 for assisted outpatient treatment. Assisted outpatient  
10 treatment may include one or more of the following categories:

- 11 (1) medication;
- 12 (2) periodic blood tests or urinalysis to  
13 determine compliance with prescribed medications;
- 14 (3) individual or group therapy;
- 15 (4) day or partial day programming activities;
- 16 (5) educational and vocational training or  
17 activities;
- 18 (6) alcohol or substance abuse treatment and  
19 counseling and periodic tests for the presence of alcohol or  
20 illegal drugs for persons with a history of alcohol or  
21 substance abuse; or
- 22 (7) supervision of living arrangements.

23 B. If after hearing all relevant evidence, the  
24 court finds the subject to be an incapacitated person, that  
25 grounds for assisted outpatient treatment services have been

1 established by clear and convincing proof and that there is no  
2 appropriate and feasible less restrictive alternative, but the  
3 court has yet to be provided with a written proposed treatment  
4 plan and testimony pursuant to Section 7 of Kendra's Law, the  
5 court shall order the provider to provide the court with a  
6 written treatment plan and testimony as soon as practicable.  
7 Upon receiving the written treatment plan and testimony, the  
8 court may order assisted outpatient treatment as provided in  
9 Subsection A of this section.

10 C. If the petitioner is a provider that operates an  
11 assisted outpatient treatment program, the court order shall  
12 direct the provider to provide or arrange for all assisted  
13 outpatient treatment for the patient throughout the period of  
14 the order.

15 D. The provider shall apply to the court for  
16 approval before instituting a proposed material change in the  
17 assisted outpatient treatment order unless such change is  
18 contemplated in the order. An application for approval shall  
19 be served upon those persons required to be served with notice  
20 of a petition for an order authorizing assisted outpatient  
21 treatment pursuant to this section. Nonmaterial changes may be  
22 instituted by the assisted outpatient treatment program without  
23 court approval.

24 E. For purposes of this section, "material change"  
25 means an addition or deletion of a category of assisted

1 outpatient treatment or a substantial deviation without the  
2 patient's consent from the terms of the existing order relating  
3 to the administration or type of psychotropic drugs.

4 Section 9. APPLICATIONS FOR ADDITIONAL PERIODS OF  
5 TREATMENT.--

6 A. If a provider determines that the condition of a  
7 patient requires further assisted outpatient treatment, the  
8 provider shall seek, prior to the expiration of the period of  
9 assisted outpatient treatment ordered by the court, a second or  
10 subsequent order authorizing continued assisted outpatient  
11 treatment for a period not to exceed one year from the date of  
12 the second or subsequent order. If the court's disposition of  
13 the application does not occur prior to the expiration date of  
14 the current order, the current order shall remain in effect  
15 until the court's disposition. An order for an additional  
16 period of treatment shall be obtained pursuant to the  
17 provisions of Kendra's Law.

18 B. A court order requiring periodic blood tests or  
19 urinalysis for the presence of alcohol or illegal drugs shall  
20 be subject to review after six months by a physician, who shall  
21 be authorized to terminate such blood tests or urinalysis  
22 without further action by the court.

23 Section 10. APPLICATION FOR AN ORDER TO STAY, VACATE OR  
24 MODIFY.--In addition to any other right or remedy available by  
25 law with respect to the order for assisted outpatient

1 treatment, the patient, the patient's counsel or anyone acting  
2 on the patient's behalf may apply to the court to stay, vacate  
3 or modify the order. A copy of the application shall be served  
4 on the appropriate provider and the original petitioner.

5 Section 11. FAILURE TO COMPLY WITH ASSISTED OUTPATIENT  
6 TREATMENT.--

7 A. A physician may determine that a patient has  
8 failed to comply with assisted outpatient treatment if, in the  
9 clinical judgment of the physician:

10 (1) the patient has failed or has refused to  
11 comply with the treatment ordered by the court;

12 (2) efforts were made to solicit compliance;

13 (3) the patient may be in need of involuntary  
14 admission to a hospital for immediate observation, care and  
15 treatment; and

16 (4) if the patient refuses to take medications  
17 or refuses to take or fails a blood test, urinalysis or alcohol  
18 or drug test as required by the court order, the physician may  
19 consider such refusal or failure when determining whether the  
20 assisted outpatient is in need of an examination to determine  
21 whether the patient has a mental illness for which  
22 hospitalization is necessary.

23 B. Upon the request of a physician, a provider may  
24 transport a patient to the hospital operating the assisted  
25 outpatient treatment program or to any other hospital

1 authorized by the department to receive such persons.

2 C. If deemed necessary and upon the request of a  
3 physician, a provider may request the aid of a law enforcement  
4 officer to take the patient into custody and accompany the  
5 physician in transporting the patient to the hospital operating  
6 the assisted outpatient treatment program or to any hospital  
7 authorized by the department to receive such persons. A law  
8 enforcement officer may carry out a provider's directive  
9 pursuant to this section.

10 D. The patient may be retained for observation,  
11 care, treatment and further examination in the hospital for up  
12 to seventy-two hours to permit a physician to determine whether  
13 the patient has a mental illness and is in need of assisted  
14 outpatient treatment pursuant to Kendra's Law. Any continued  
15 involuntary retention in a hospital beyond the initial  
16 seventy-two-hour period shall be in accordance with the  
17 provisions of the Mental Health and Developmental Disabilities  
18 Code relating to the involuntary admission and retention of a  
19 person. If at any time during the seventy-two-hour period the  
20 person is determined not to meet the involuntary admission and  
21 retention provisions of Kendra's Law and the person does not  
22 agree to stay in the hospital as a voluntary or informal  
23 patient, the patient must be released.

24 E. A patient's failure to comply with an order of  
25 assisted outpatient treatment is not grounds for involuntary

1 civil commitment or a finding of contempt of court.

2 Section 12. SEQUESTRATION AND CONFIDENTIALITY OF  
3 RECORDS.--

4 A. A petition initiating proceedings pursuant to  
5 the provisions of Kendra's Law shall be entitled "In the Matter  
6 of .....", and shall set forth with  
7 specificity:

8 (1) the facts necessary to invoke the jurisdiction  
9 of the court;

10 (2) the name, birth date and residence address of  
11 the subject of the petition; and

12 (3) any other substantive matters required by  
13 Kendra's Law to be set forth in the petition.

14 B. All records or information concerning a party to  
15 a proceeding pursuant to Kendra's Law, including all pleadings  
16 and other documents filed in the matter, social records,  
17 diagnostic evaluations, psychiatric or psychologic reports,  
18 videotapes, transcripts and audio recordings of interviews and  
19 examinations, recorded testimony and the assisted outpatient  
20 treatment plan that was produced or obtained as part of a  
21 proceeding pursuant to Kendra's Law shall be confidential and  
22 closed to the public.

23 C. The records described in Subsection B of this  
24 section shall be disclosed only to the parties and:

25 (1) court personnel;

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- 1 (2) court-appointed special advocates;
- 2 (3) the subject's attorney, personal
- 3 representative, agent, surrogate, guardian or individual
- 4 designated by the person to make health care decisions;
- 5 (4) law enforcement officials requested by the
- 6 court to perform any duties or functions related to the subject
- 7 as deemed appropriate by the court;
- 8 (5) providers involved in the evaluation or
- 9 treatment of the subject; or
- 10 (6) any other person or entity, by order of the
- 11 court, having a legitimate interest in the case or the work of
- 12 the court.

13 D. Whoever intentionally and unlawfully releases  
14 any information or records closed to the public pursuant to  
15 Kendra's Law or releases or makes other unlawful use of the  
16 records in violation of that act is guilty of a petty  
17 misdemeanor.

18 Section 13. CRIMINAL PROSECUTION.--A person who makes a  
19 false statement or provides false information or false  
20 testimony in a petition or hearing pursuant to the provisions  
21 of Kendra's Law is subject to criminal prosecution.

22 Section 14. EDUCATIONAL MATERIALS.--The department, in  
23 consultation with the administrative office of the courts,  
24 shall prepare educational and training materials on the  
25 provisions of Kendra's Law that shall be made available to

1 providers, judges, court personnel, law enforcement officials  
2 and the general public.

3 Section 15. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is July 1, 2006.

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